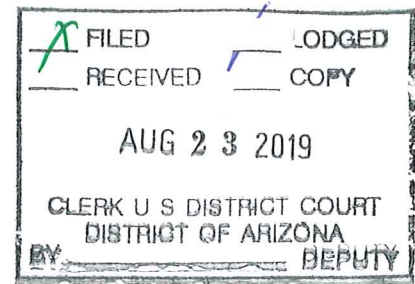


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SEALED

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12 PACIFIC LOGISTICS CORP,
13 a California corporation,

14 Plaintiff,

15 v.

16 PACIFIC LOGISTICS PRIORITY MAIL, a
17 business entity form unknown; JOHN DOE,
18 said name being fictitious and unknown;
19 DOES 2 through 10; and ROE
20 CORPORATIONS 2 through 10,

21 Defendants.

CASE NO.: CV-19-05023-PHX-SMB

PACIFIC LOGISTICS CORP'S *EX*
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

1 **I. Introduction**

2 Defendants defraud consumers by using confusingly similar trademarks and domain
3 name to scam innocent consumers out of package delivery and insurance fees without
4 shipping purchased products. An actually confused and scammed consumer mistakenly
5 contacted Plaintiff instead of Defendants to inquire about a product shipment not received
6 from Defendants. Plaintiff needs this Court's intervention to enjoin Defendants' fraud on
7 consumers and infringement of Plaintiff's trademarks and damage to its goodwill.

8 **II. Statement of Facts**

9 Pacific Logistics Corp ("PLC") is a world-renowned high-quality shipping and
10 freight services company with commended customer service. Declaration of Eric
11 Hockersmith ("Hockersmith Decl."), ¶3. For over twenty years, PLC has used Pacific
12 Logistics™ and Pacific Logistics Corp™ as marks, including on its website, advertising,
13 business cards, as part of its www.pacific-logistics.com domain name, and even on its office
14 building and vehicles as shown below:



24 Hockersmith Decl., ¶4. PLC has developed its great reputation and continuously and
25 exclusively used the Pacific Logistics Corp™, PLC PACIFIC LOGISTICS® plus design,
26 and PLC® marks (collectively the "Pacific Logistics Marks") in the shipping and freight
27 industries. Hockersmith Decl., ¶5. Specifically, PLC owns federally incontestable
28 trademark registrations for PLC PACIFIC LOGISTICS CORP design mark (Registration

No. 4,245,361) and PLC word mark (Registration No. 4,245,364), both marks are registered in connection with services in International Class 39, namely: “Freight transportation by truck, rail, air and ship; Freight transportation consultation in the field of freight transportation by truck, rail, air and ship; Supply chain logistics and reverse logistics services, namely, storage, transportation and delivery of goods for others by truck, rail, air and ship.” Hockersmith Decl., ¶¶6-7. PLC also uses its marks on its website and in its www.pacific-logistics.com domain. Hockersmith Decl., ¶8.

Pacific Logistics Priority Mail (“PLPM”), John Doe, Doe Defendants, and Roe Corporations (collectively, “Defendants”) knowingly and willfully adopted a highly similar trademark in order to benefit from PLC’s efforts.



PLC’s Mark

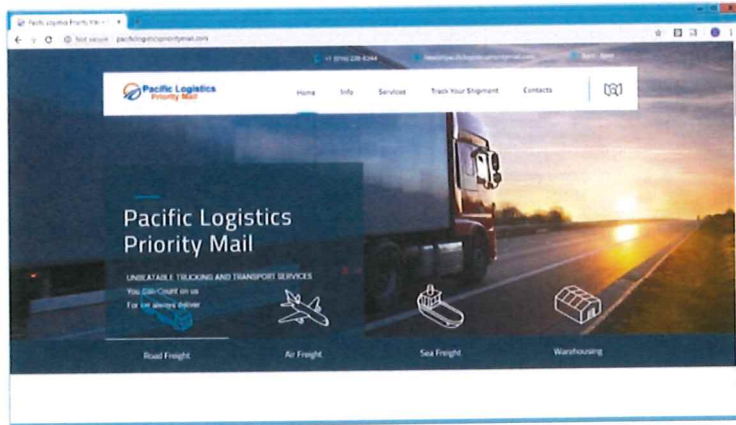


Defendants’ Accused Mark

Defendants attempt to create an aura of legitimacy by publishing a website similar to the Plaintiff to further confuse consumers.



PLC’s Website



Defendants' Website

These actions merely perpetuate a façade for Defendants to scam innocent customers and prevent them from realizing the shipping services they sought out. Defendants have successfully confused consumers into believing they are associated with Plaintiff.

Defendants operate a fake website storefront using the confusingly similar www.pacificlogisticsprioritymail.com domain name for a non-existent shipping company since January 2018, almost twenty years after PLC's first date of use. Declaration of Milord A. Keshishian ("Keshishian Decl."), ¶¶6, 29. Defendants' website includes fake customer testimonials and fake organization members. Keshishian Decl., ¶¶7-11. Google and LexisNexis Public Record searches establish the testimonial customers and organization members are fake. Keshishian Decl., ¶¶13-22. Defendants' website provides two locations in the United States, but Google Maps searches of the properties identify other businesses and do not list Defendants' fraudulent enterprise. Keshishian Decl., ¶23. Additionally, Defendants purport to use no less than three different email address extensions, including pacificlogisticsprioritymail@gmail.com, contact@pacificlogisticsprioritymail.com, and goerge.brolin@bestlogistic.com (purported Chairman and CEO's email address). Keshishian Decl., ¶¶6, 24-25, 28. The latter two email addresses (displayed on the Defendants' website) do not connect to a real inbox proving that Defendants are not a legitimate shipping and freight company. Keshishian Decl., ¶¶24-25. Moreover, the phone number listed on the www.pacificlogisticsprioritymail.com website does not connect to an

1 actual person. Keshishian Decl., ¶¶33-34.

2 On or about August 7, 2019, Catherine Gallagher – an actual confused consumer –
3 emailed PLC through its info@pacific-logistics.com address. Hockersmith Decl., ¶10. Ms.
4 Gallagher, mistakenly believing that PLC and Defendants were the same entity, inquired
5 about her package’s delivery status since she paid Defendants’ insurance fees, attaching a
6 screenshot of Defendants’ invoice. Hockersmith Decl., ¶10. Prior to this communication,
7 PLC never interacted with Ms. Gallagher and she was never one of its customers.
8 Hockersmith Decl., ¶11. Prior to Ms. Gallagher’s contact, PLC was not aware of
9 Defendants’ fraudulent operations. Hockersmith Decl., ¶12.

10 PLC forwarded Ms. Gallagher’s email to its counsel Milord A. Keshishian, and he
11 contacted Ms. Gallagher to alleviate her actual confusion and inform her that PLC and
12 Defendants were not related entities. Keshishian Decl., ¶¶26-27. Ms. Gallagher responded
13 by providing screenshots of her Western Union money transfer to Defendants for
14 “refundable insurance,” and forwarded her previous communications with Defendants.
15 Keshishian Decl., ¶27-28.

16 Ms. Gallagher’s email communications with PLPM demonstrate a typical scam to
17 pressure Ms. Gallagher to pay additional fees via untraceable methods with a false promise
18 of receiving her package. Keshishian Decl., ¶28. PLPM advised Ms. Gallagher she needed
19 to pay \$310 for additional “insurance” before the product could be shipped, which it would
20 “refund” after the delivery. Keshishian Decl., ¶28. Ms. Gallagher complied and paid
21 PLPM \$310 via an untraceable Western Union transfer, PLPM then stated the package had
22 insufficient “stamps” and required further payment of either an additional \$322 for a three-
23 year term or \$505 for a five-year term for the release of her package. Keshishian Decl., ¶28.
24 Ms. Gallagher expressed her frustration with PLPM, calling them “scammers,” to which
25 they responded that she was following bad advice and needed to remit payment. Keshishian
26 Decl., ¶28. Ms. Gallagher then contacted Plaintiff – believing it was related to PLPM –
27 regarding the delivery status of her package. Hockersmith Decl., ¶10.

28 Defendants carefully curated and crafted a fake online presence using infringing

1 trademarks and confusingly similar domain name and email address to confuse consumers
2 and cause them to associate Defendants with PLC, thereby adding seeming legitimacy to
3 their scam operations. As evidenced by Ms. Gallagher's confusion, Defendants have
4 succeeded in not only infringing PLC's trademarks and harming its goodwill, but also
5 defrauding consumers.

6 Without the Court's intervention, Defendants will continue scamming consumers and
7 tarnishing PLC's trademarks. When Defendants learn of this action, they will likely erase
8 all relevant information and transfer the domain names outside of this jurisdiction,
9 preventing PLC from recovering and rendering this lawsuit fruitless. Therefore, the Court
10 must enjoin Defendants at this early stage.

11 **III. Argument**

12 A temporary restraining order, or preliminary injunction, should be entered where
13 plaintiff establishes: (1) likelihood of success on the merits; (2) a likelihood of irreparable
14 harm; (3) the balance of equities is in plaintiff's favor; and (4) the public interest would not
15 be disserved by the issuance of a preliminary injunction. *See Alliance for the Wild Rockies*
16 *v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

17 The Lanham Act permits courts to issue injunctive relief "according to principles of
18 equity and upon such terms as the court may deem reasonable, to prevent the violation of
19 any right of the registrant of a mark ..." 15 U.S.C. § 1116(a). Requesting equitable relief
20 "invokes the district court's inherent equitable powers to order preliminary relief, including
21 an asset freeze, in order to assure the availability of permanent relief." *Chanel, Inc. v.*
22 *Partnerships or Unincorporated Associations Identified on Schedule "A"*, No. 3:13-CV-
23 02645-RS, 2013 WL 12120213, at *1 (N.D. Cal. June 14, 2013), (quoting *Levi Strauss &*
24 *Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (internal citations
25 omitted)).

26 Federal Rule of Civil Procedure 65(b) states a court may issue a temporary
27
28

1 restraining order (“TRO”) without notice to the adverse party or its attorney when:

2 (a) specific facts in an affidavit or a verified complaint clearly show that
3 immediate and irreparable injury, loss, or damage will result to the movant
4 before the adverse party can be heard in opposition; and (b) the movant’s
5 attorney certifies in writing any efforts made to give notice and the reasons
6 why it should not be required.

6 Fed. R. Civ. P. 65(b)(1)(A)-(B).

7 “A party seeking an asset freeze must show a likelihood of dissipation of the claimed
8 assets, or other inability to recover monetary damages, if relief is not granted.” *Johnson v.*
9 *Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). Courts in this Circuit have granted TROs
10 in trademark infringement cases to prevent defendants from continuing their infringing
11 activity and freezing domain names. *See Chloe SAS v. Sawabeh Info. Servs. Co.*, No. 2:11-
12 CV-04147-GAF (MANx), 2011 WL 13130013, at *2 (C.D. Cal. May 17, 2011) (granting
13 TRO to prevent defendants from continuing their activities, freezing defendants’ assets, and
14 requiring a lock of defendants domain names where defendants were using plaintiffs’
15 trademarks to sell counterfeit goods); *Tiffany (NJ), LLC v. 925ly.com*, No. 2:11-CV-00590-
16 LDG-CWH, 2011 WL 13249925 (D. Nev. Sept. 27, 2011) (granting TRO freezing domain
17 name transfer where defendants sold counterfeit goods under plaintiffs’ trademarks); *Las*
18 *Vegas Sands Corp. v. Fan Yu Ming*, 360 F. Supp. 3d 1072, 1080 (D. Nev. 2019) (granting
19 preliminary injunction following a TRO freezing defendants’ domain names that featured
20 plaintiff’s trademarks for similar services).

21 The Court should issue an injunction because PLC will likely prevail on the merits,
22 Defendants’ fraudulent actions are causing ongoing and immediate irreparable harm, the
23 balance of equities favors PLC, and a TRO is in the public’s interest to prevent Defendants’
24 fraud.

25 **A. Likelihood of Success on the Merits**

26 PLC is likely to succeed on the merits for its claims of (1) trademark infringement
27 under 15 U.S.C. § 1114, (2) unfair competition/false designation of origin under 15 U.S.C. §
28 1125(a), (3) violation of the Anticybersquatting Consumer Protection Act under 15 U.S.C. §

1 1125(d), (4) common law trademark infringement, and (5) unfair competition under Cal.
2 Bus. & Prof. Code § 17200.

3 **1. Trademark Infringement**

4 To state a claim for trademark infringement, a plaintiff must allege: (1) ownership of
5 a valid, protectable mark; and (2) that the alleged infringer is using a confusingly similar
6 mark. *Herb Reed Enterprises, LLC v. Florida Entm't Mgmt., Inc.*, 736 F.3d 1239, 1247 (9th
7 Cir. 2013).

8 In determining likelihood of confusion, courts in this Circuit look to the *Sleekcraft*
9 factors, which include: (1) strength of plaintiff's trademarks; (2) proximity of the goods; (3)
10 similarity of the marks; (4) evidence of actual confusion; (5) marketing channels; (6) types
11 of goods and consumer's degree of care; (7) defendants' intent; and (8) likelihood of
12 expansion into the area of goods. *See AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir.
13 1979). "This list of factors . . . is neither exhaustive nor exclusive. Rather, the factors are
14 intended to guide the court in assessing the basic question of likelihood of confusion." *E &*
15 *J Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1290 (9th Cir. 1992).

16 **a. Ownership of a Valid, Protectable Mark**

17 Federal trademark registrations constitute prima facie evidence of the validity and
18 exclusive right to use the marks in commerce in connection with certain goods and services.
19 *See Coca-Cola Co v. Overland Inc.*, 692 F.2d 506, 509 (9th Cir. 1969).

20 Here, PLC extensively uses its trademarks in connection with shipping and freight
21 services and has amassed valuable goodwill over the past 20 years. PLC holds
22 incontestable federal trademark registrations for its PLC PACIFIC LOGISTICS® and
23 design and PLC® trademarks. Hockersmith Decl., ¶¶6-7. Because the marks have been
24 registered for over five years, the incontestable status of these marks are "conclusive
25 evidence of the validity of the registered mark and its registration, of the registrant's
26 ownership of the mark, and of the registrant's 'exclusive right to use' the registered mark on
27 the goods or services." 15 U.S.C.A. § 1115(b).

28 Further, PLC has common law trademark rights in its PACIFIC LOGISTICS™ mark

1 dating back to 1999. Hockersmith Decl., ¶4; Keshishian Decl., ¶¶29, 32; *see B & B*
2 *Hardware, Inc. v. Hargis Industries, Inc.*, 135 S. Ct. 1293, 1299, 1310, 191 L. Ed. 2d 222,
3 113 U.S.P.Q.2d 2045 (2015) (“One who first uses a distinct mark in commerce thus
4 acquires rights to that mark.”); *Hana Financial, Inc. v. Hana Bank*, 135 S. Ct. 907, 909, 190
5 L. Ed. 2d 800, 113 U.S.P.Q.2d 1365 (2015) (“Rights in a trademark are determined by the
6 date of the mark’s first use in commerce. The party who first uses a mark in commerce is
7 said to have priority over other users.”).

8 Alternatively, according to the WHOIS report, Defendants registered their infringing
9 domain name and used the infringing marks in or about January 2018, almost twenty years
10 after PLC’s first use date. Keshishian Decl., ¶¶30-31. Thus, PLC holds valid, protectible
11 trademarks, and has priority of use in the Pacific Logistics Marks.

12 **b. Strength of the Mark**

13 The “strength” of the trademark is evaluated in terms of its conceptual strength and
14 commercial strength. *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1207 (9th Cir.
15 2000) (citation omitted). The conceptual strength of a mark is determined on a scale from
16 generic (afforded no protection), through descriptive (entitled to no protection absent a
17 showing of secondary meaning) and suggestive (entitled to moderate protection), to
18 arbitrary or fanciful (entitled to maximum protection). *See Id.*; *see also Two Pesos, Inc. v.*
19 *Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992).

20 PLC’s trademarks were passed to registration by the trademark examiner, indicating
21 that they at the very least suggestive and registerable without evidence of secondary
22 meaning. *See 3 McCarthy on Trademarks and Unfair Competition* (“McCarthy on
23 Trademarks”) § 19:42 (5th ed.). Even assuming, *arguendo*, PLC’s marks were descriptive,
24 PLC’s sales of hundreds of millions of dollars in the almost twenty-years before
25 Defendants’ infringement began is conclusive proof of the secondary meaning in PLC’s
26 Pacific Logistics mark. Hockersmith Decl., ¶9; *see Filipino Yellow Pages, Inc. v. Asian*
27 *Journal Publications, Inc.*, 198 F.3d 1143, 1152 (9th Cir. 1999) (“[s]econdary meaning can
28 be established in many ways, including . . . amount of sales . . .”). Therefore, this factor

weighs in favor of a finding of likelihood of confusion.

c. Similarity of the Marks

In evaluating the similarity between the marks, this Circuit relies upon “axioms to guide this comparison: first, the marks must be considered in their entirety and as they appear in the marketplace; second, similarity is adjudged in terms of appearance, sound, and meaning; and third, similarities are weighed more heavily than differences.” *GoTo.com, Inc.*, 202 F.3d at 1206 (internal citations omitted).

At first glance, the marks here are plainly similar, including Defendants’ use of a nearly identical font:

PLC’s Marks	Defendants’ Accused Marks
PACIFIC LOGISTICS Corp™ PLC®	PACIFIC LOGISTICS PRIORITY MAIL
	
www.pacific-logistics.com	www.pacificlogisticsprioritymail.com

Moreover, PLC includes a “stylized cutaway” in its design mark, which is copied both in depth and angle in the Defendants’ mark.

The dominant portion of both marks are “PACIFIC LOGISTICS.” Moreover, Defendants’ use of the “PRIORITY MAIL” term does nothing to reduce the similarity of the dominant “PACIFIC LOGISTICS” portion of their mark by adding the generic term “priority mail” in smaller, dissimilar color, font below the dominant portion. *Filipino Yellow Pages*, 198 F.3d at 1147 (generic terms are not subject to trademark protection). Therefore, this factor weighs in favor of a finding of likelihood of confusion.

d. Proximity of the Services

“Related goods are generally more likely than unrelated goods to confuse the public as to the producers of the goods.” *Brookfield Commc’ns, Inc. v. W. Coast Entm’t Corp.*, 174 F.3d 1036, 1056 (9th Cir. 1999). Here, Defendants intentionally attempt to mimic PLC’s exact freight and shipping services to defraud consumers. Therefore, this factor

weighs in favor of finding likelihood of confusion.

e. Actual Confusion

“Evidence of actual confusion by consumers is strong evidence of likelihood of confusion.” *Survivor Media, Inc. v. Survivor Productions*, 406 F.3d 625, 633 (9th Cir. 2005). Ms. Gallagher’s misdirected email to PLC inquiring about the status of her package delivery from Defendants evidences actual confusion. Hockersmith Decl., ¶10. The email also evidences Defendants fraudulently passing off the Pacific Logistics Marks to increase the chance of actual confusion and to trade of PLC’s goodwill. See *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 27 n.1 (2003). Thus, this factor weighs in favor of a finding of likelihood of confusion.

f. Marketing Channels

Both parties’ websites advertise their shipping and logistics services. See *Brookfield Commc’ns*, 174 F.3d at 1057 (both parties utilizing the Internet “as a marketing and advertising facility . . . [is] consistently recognized as exacerbating the likelihood of confusion.”). Therefore, this factor weighs in favor of a finding of likelihood of confusion.

g. Defendants’ Intent

An “intent to deceive is strong evidence of a likelihood of confusion.” *Interstellar Starship Servs., Ltd. v. Epix*, 184 F.3d 1107, 1111 (9th Cir. 1999). Where a plaintiff has a strong reputation and the marks are similar, there is an inference of defendant’s intent to deceive consumers. *K-Swiss, Inc. v. USA AISIQI Shoes Inc.*, 291 F. Supp. 2d 1116, 1125 (C.D. Cal. 2003).

Defendants’ use of infringing Pacific Logistics trademarks including in its www.pacificlogisticsprioritymail.com domain name and pacificlogisticsprioritymail@gmail.com email address to defraud consumers evidences Defendants’ intent to create sense of association, affiliation, collaboration, or sponsorship between the parties, where none actually exists, to defraud consumers. Further. Defendants’ use PrivacyGuardian.org and CloudFlare to hide their identities while continuing to defraud and confuse consumers through an active website. Accordingly, this factor weighs in favor

1 of a finding of likelihood of confusion.

2 **h. Consumer's Degree of Care**

3 In determining the degree of care by Internet users, the *Brookfield* court noted:

4 In the Internet context, in particular, entering a web site takes little effort—
5 usually one click from a linked site or a search engine's list; thus, Web surfers
6 are more likely to be confused as to the ownership of a web site than
7 traditional patrons of a brick-and-mortar store would be of a store's
ownership.

8 *Brookfield*, 174 F.3d at 1057. "Navigating amongst web sites involves practically no effort
9 whatsoever, and arguments that Web users exercise a great deal of care before clicking on
10 hyperlinks are unconvincing." *GoTo.com*, 202 F.3d at 1209.

11 Here, both Parties primarily use the Internet to advertise their services. Therefore, the
12 degree of consumer care is low and this factor weighs in favor of likelihood of confusion.

13 **i. Likelihood of Expansion into the Area of Goods**

14 "The likelihood of expansion in product lines factor is relatively unimportant where
15 two companies already compete to a significant extent." *Brookfield*, 174 F.3d at 1060
16 (internal citation omitted). Because Defendants fraudulently mimic PLC's services, this
17 factor weighs in favor of likelihood of confusion.

18 **j. Balance of likelihood of confusion factors**

19 On balance, the factors weigh in favor of a finding of likelihood of confusion. Thus,
20 PLC will likely prevail on its trademark infringement cause of action.

21 **2. Anticybersquatting Consumer Protection Act**

22 "The Anti-Cybersquatting Consumer Protection Act establishes civil liability for
23 'cyberpiracy' where a plaintiff proves that (1) the defendant registered, trafficked in, or used
24 a domain name; (2) the domain name is identical or confusingly similar to a protected mark
25 owned by the plaintiff; and (3) the defendant acted "with bad faith intent to profit from that
26 mark." *DSPT Int'l, Inc. v. Nahum*, 624 F.3d 1213, 1218-19 (9th Cir. 2010).

27 Here, Defendants registered and use PLC's Pacific Logistics Marks in its infringing
28 domain name, www.pacificlogisticsprioritymail.com. Keshishian Decl., ¶30. Defendants'

1 domain is confusingly similar to PLC's www.pacific-logistics.com domain name, where
2 both domains begin with the "Pacific Logistics" mark. Defendants' actions show they
3 "acted with bad faith" where the websites are similar and they refer to themselves as
4 "Pacific Logistics." Keshishian Decl., ¶28. Further, Defendants' adoption of a confusingly
5 similar domain name and email address in efforts to divert customers away from PLC
6 indicates demonstrates its bad faith, putting it outside of the safe harbor defense. *See*
7 *GoPets Ltd. v. Hise*, 657 F.3d 1024, 1033 (9th Cir. 2011) (court found registration of
8 domains to achieve "commercial gain" by confusing consumers and diverting them from
9 plaintiff amounted to bad faith).

10 Therefore, PLC will likely prevail on its violation of the Anticybersquatting
11 Consumer Protection Act cause of action.

12 3. Unfair Competition / False Designation of Origin

13 A false designation of origin occurs when a defendant misleads consumers as to the
14 producer of the services that are offered for sale. *Dastar*, 539 U.S. at 37. Likewise, unfair
15 competition relates to the use of deceptive and misleading marks. *Two Pesos*, 505 U.S. at
16 768. "Whether we call the violation infringement, unfair competition or false designation of
17 origin, the test is identical is there a 'likelihood of confusion?'" *New W. Corp. v. NYM Co.*
18 *of California*, 595 F.2d 1194, 1201 (9th Cir. 1979),

19 As detailed above, PLC will likely prevail on its trademark infringement cause of
20 action because it can prove the marks are confusingly similar. Therefore, PLC will likely
21 prevail on its unfair competition and false designation of origin causes of action.

22 4. Common Law Trademark Infringement and Unfair Competition 23 under Cal. Bus. & Prof. Code § 17200

24 The likelihood of confusion test is also used in analyzing common law trademark
25 infringement claims. *See Cleary v. News Corp.*, 30 F.3d 1255, 1264 (9th Cir. 1994) ("This
26 Circuit has consistently held that state common law claims of unfair competition and actions
27 pursuant to California Business and Professions Code § 17200 are 'substantially congruent'
28

1 to claims made under the Lanham Act.”).

2 As stated above, PLC is likely to succeed on the merits of its federal trademark
3 infringement claim. PLC therefore would prevail on its state law claims that rely upon the
4 same analysis.

5 **B. Likelihood of Irreparable Harm**

6 In a trademark case, a plaintiff must show irreparable harm is likely to occur in the
7 absence of a preliminary injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
8 (2008).

9 Here, there is immediate and clear irreparable harm because Defendants are blatant
10 scam artists. Defendants are using the Pacific Logistics Marks to cloak themselves as a
11 legitimate operation to defraud consumers into paying them with untraceable methods for
12 non-existent shipments of products. Consumers like Ms. Gallagher are actually confused by
13 Defendants’ use of PLC’s Pacific Logistics Marks. This confusion and fraudulent scheme
14 will only escalate with the passage of time absent injunctive relief. *See McCarthy on*
15 *Trademarks* § 2:23 (trademark infringement is a type of fraud); *Toyo Tire & Rubber Co. v.*
16 *Kabusikiki Kaisha Tokyo Nihoon Rubber Corp*, No. 2:14-CV-01847-JAD-VCF, 2015 WL
17 6501228, at *4 (D. Nev. Oct. 26, 2015) (irreparable harm established where plaintiff has
18 “spent considerable time and effort building its reputation” and the infringing defendant
19 “has merely piggy-backed off of [the plaintiff’s] success.”).

20 Irreparable harm will also continue if Defendants’ domain names are not frozen and
21 locked by its registrar, NameSilo, because Defendants may transfer the domain name to a
22 company outside this Court’s – or any U.S. based court’s – jurisdiction. And if Defendants’
23 Google gmail email address registered with Google is not preserved, locked and frozen
24 Defendants may delete evidence of their illicit enterprise. *See Las Vegas Sands*, 360 F.
25 Supp. 3d at 1080 (“Irreparable harm is also implicated where there is a potential for an
26 infringing defendant to transfer domain names to a different registrar outside of a court’s
27 jurisdiction.”). Further, irreparable harm will continue if CloudFlare does not preserve and
28 freeze the hosting of the website because Defendants may transfer the website host to a

1 company outside this Court's – or any U.S. based court's – jurisdiction. Further, if
2 CloudFlare does not make the infringing account inaccessible and does not prevent
3 Defendants from altering or deleting the infringing website or content, additional innocent
4 consumers may be defrauded. *Shutterfly, Inc. v. ForeverArts, Inc.*, No. CV 12-3671 SI,
5 2012 WL 2911887, at *3 (N.D. Cal. July 13, 2012) (court finding irreparable harm where
6 defendant may shift infringing website overseas). Without an order to freeze, lock, or seize,
7 Defendants will continue their illegal activities, causing other consumers to be swindled in
8 addition to further damaging PLC's trademarks. Further, there is the probability Defendants
9 will destroy evidence and/or transfer the domain name to a registrar outside of the United
10 States to evade this lawsuit. In either event, PLC would be barred from properly
11 investigating the extent of damage caused by Defendants to its trademarks, would not be
12 able to realize adequate recovery as Defendants would continue its infringing activities
13 outside of this Court's reach, and would prevent it from adequately recovering damages and
14 equitable relief. Thus, irreparable harm will continue without the Court's intervention.

15 **C. Balance of Equities Favor PLC**

16 The balance of equities favor PLC because Defendants are not actually providing any
17 shipping services and are only defrauding the general public. *See* McCarthy on Trademarks
18 § 2:23 (trademark infringement is a form of fraud). Defendants should not be able to
19 continue their fraud and trade off PLC's goodwill, when PLC has spent significant time and
20 money in its efforts to promote, advertise, and market its legitimate services. *See Las Vegas*
21 *Sands*, 360 F. Supp. 3d at 1081.

22 The injunctive relief sought here is limited in scope, in that it preserves the *status quo*
23 by preventing Defendants from transferring any domain names away from this jurisdiction
24 and holding assets in the United States. *See* Fed. R. Civ. P. 65. The inconvenience to the
25 Defendants' business activity, if any, are minimal as the injunction only serves to preserve
26 evidence and ensure that Defendants do not transfer or otherwise dispose of the domain
27 name and related information. *See Shutterfly*, 2012 WL 2911887 at *3.

28 Therefore, the balance of equities favors the granting of a temporary restraining

1 order.

2 **D. Public Interest**

3 An injunction will best serve the public's interest because people will no longer be
4 defrauded by Defendants into paying for non-existent shipment and insurance services.
5 *Stark v. Diageo Chateau & Estate Wines Co.*, 907 F. Supp. 2d 1042, 1067 (N.D. Cal. 2012)
6 ("Preventing consumer confusion serves the public interest and there is a strong policy in
7 favor of protecting rights to trademarks."). Defendants created all the necessary parts to
8 appear legitimate, like a true con artist, including use of the Pacific Logistics Marks, having
9 a website with alleged warehouse locations in the U.S. and testimonials of happy customers.
10 The issuance of the injunction will limit Defendants' contact with the public, and in turn,
11 the people will no longer be harassed for money by Defendants.

12 **IV. Conclusion**

13 Consumers, like Ms. Gallagher, continue to be scammed by Defendants' use of the
14 Pacific Logistics Marks. Defendants have proven that they cannot be trusted to play fairly,
15 will likely transfer the domains outside of this jurisdiction, and destroy evidence absent the
16 Court's intervention at this early stage of litigation.

17 Issuance of an injunction is proper here where: (1) PLC will likely succeed on the
18 merits of each of their claims because there is a likelihood of confusion between the marks
19 and Defendants engaged in cybersquatting; (2) there is an ongoing irreparable harm
20 resulting from Defendants' activities, which would cease with the Court's injunction; (3) the
21 balance of equities favors PLC as the injunction seeks to maintain the *status quo*, and
22 attempts to preserve evidence and prevent the Defendants from deleting or moving the
23 domains, websites, or fraudulent emails outside this Court's jurisdiction; and (4) the public
24 is best served by the issuance of an injunction because it will effectively cause Defendants
25 to cease operations in the interim and they will not be confused as to which services are

26 ///

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1 fraudulent (PLPM) versus legitimate (PLC).

2 Accordingly, the Court should grant PLC's *ex parte* motion for a temporary
3 restraining order.

4 Dated: August 21, 2019

Respectfully submitted,

5 **MILORD & ASSOCIATES, P.C.**

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7 By: 

8 Milord A. Keshishian
9 Attorneys for Plaintiff
PACIFIC LOGISTICS CORP